

Exhibit 1

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

PUBLIC EMPLOYEES' RETIREMENT
SYSTEM OF MISSISSIPPI, et al.,
Individually and On Behalf of All Others
Similarly Situated,

Plaintiffs,

v.

MERRILL LYNCH & CO. INC., et al.,

Defendants.

Civil Action No. 08-cv-10841-JSR-JLC
ECF case

CLASS ACTIONS - CONSOLIDATED

**DECLARATION OF THE HONORABLE LAYN R. PHILLIPS
IN SUPPORT OF FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

I, LAYN R. PHILLIPS, declare as follows:

1. I was selected by the parties to act as the Mediator in the above-captioned action. I am a former Assistant United States Attorney in the Central District of California and then United States Attorney in the Northern District of Oklahoma. I was then appointed and served as a United States District Judge in the Western District of Oklahoma for four years. In 1991, I resigned from the federal bench and joined Irell & Manella LLP. Along with litigating cases, the majority of my professional time is devoted to serving as a mediator and an arbitrator in connection with large, complex cases like this one. I have successfully mediated numerous complex commercial cases, including dozens of securities class actions. I have been nationally recognized as a mediator by the Center for Public Resources Institute for Dispute Resolution ("CPR"), serving on CPR's National Panel of Distinguished Neutrals. I am a member of the bars of California, the District of Columbia, Oklahoma, and Texas, as well as the U.S. Courts of Appeal for the Ninth Circuit, Tenth Circuit, and the Federal Circuit.

2. Based on my experience as both a mediator and as a litigator, as discussed below, I believe that the Settlement was reached after arm's-length negotiations and represents an excellent recovery for the Class and a reasonable and fair outcome for all parties involved.

3. While the mediation process is confidential, the parties have authorized me to inform the Court of the matters presented in this declaration in support of Lead Plaintiffs' motion for final approval of the Settlement. My statements and those of the parties during the alternative dispute resolution proceedings are subject to a confidentiality agreement, and I do not intend to waive that agreement. I make this declaration based on personal knowledge and am competent to testify to the matters set forth herein.

4. I held the formal mediation sessions in this case on October 13 and 14, 2011. In advance of the mediation sessions, I became familiar with the progress of the action, and reviewed, among other things, extensive and detailed mediation briefs submitted by the parties, including supporting evidentiary documents produced in the litigation. The in-person mediation sessions included the attendance and participation of a representative from the Lead Plaintiff, the Mississippi Public Employees Retirement System.

5. At the in-person sessions, the parties presented their respective views on the merits of the action, the evidence, and the estimated damages. After two full day sessions, the parties remained far apart, and the mediation sessions were suspended.

6. Following the October 2011 mediation sessions, the parties remained in contact with each other and me and continued to explore the possibility of resolving this action. Ultimately, on October 20, 2011, the parties reached an agreement to settle this

action for \$315 million cash. I am informed that on or about December 5, 2011, the settlement papers were finalized and then submitted to the Court for consideration, and that, on December 15, 2011, the Court granted preliminary approval of the Settlement.

7. In sum, from my involvement as the Mediator for the case, I observed first-hand that this was a hard-fought litigation which resulted in a recovery that was a product of extensive and informed negotiations conducted at arm's length. The advocacy on all sides of the case was strong. It is clear to me that, under the circumstances of the case, the Class could not have obtained the Settlement of \$315 million without a sophisticated investor serving as Lead Plaintiff or without Lead Counsel who were able to go toe-to-toe with the top-notch defense lawyers involved, all of whom displayed the highest level of professionalism in carrying out their duties on behalf of their respective clients.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 13th day of February, 2012.



HON. LAYN R. PHILLIPS
Former United States District Judge